

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHERYL BODDY,

Plaintiff,

-vs-

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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Civil Action No. 20-490

AMBROSE, Senior District Judge

MEMORANDUM ORDER

Pending before the court is Defendant's Motion to Stay this proceeding due to pending litigation before the United States Supreme Court in Carr v. Saul, ___ S.Ct. ___, No. 19-1442, 2020 WL 6551771 (U.S. Nov. 9, 2020) (granting petition for writ of certiorari out of 10th Circuit Court of Appeals); and Davis v. Saul, ___ S.Ct. ___, No. 20-105, 2020 WL 6551772 (U.S. Nov. 9, 2020) (same out of 8th Circuit Court of Appeals). (ECF No. 18). Defendant filed a Brief in Support of his Motion and Plaintiff filed a Response in Opposition to the same. (ECF Nos. 19 and 20). Defendant asserts that a stay is appropriate here because the Supreme Court's decision in these cases "may resolve" a circuit split on the issue before me in this case -- whether Plaintiff forfeited her Appointments Clause challenge by failing to raise the issue during the administrative proceedings. After careful consideration of the submissions of the parties, Defendant's Motion is denied.

The Third Circuit's decision in Cirko ex rel. Cirko v. Comm'r of Soc. Sec., 948 F.3d 148 (3d Cir. 2020) is binding upon this Court. In Cirko, our Court of Appeals determined that a Social Security claimant is not required to exhaust her Appointment Clause claim before the agency prior to raising it in the District Court. Id. at 152, 155. Defendant did not file a petition for certiorari in Cirko. Cirko has not been consolidated with the pending litigation before the

Supreme Court and has not otherwise been reopened. The Court of Appeals for the Third Circuit has issued its Mandate in the case, and the decision is final, precedential, and binding upon this District Court and this case. Cf. Brown v. Saul, No. 2:19-CV-01590, 2020 WL 6566221, at *2 & n.3 (W.D. Pa. Nov. 9, 2020); Hoover v. Saul, Civil No. 1:19-CV-579, 2020 WL 1550663 (M.D. Pa. Apr. 1, 2020).

THEREFORE, this 9th day of December, 2020, it is ordered that Defendant's Motion for Stay (ECF No. 18) is DENIED. It is further ordered that Defendant shall file its Cross Motion for Summary Judgment and Brief in Support by December 17, 2020.

BY THE COURT:

/s/ Donetta W. Ambrose
Donetta W. Ambrose
United States Senior District Judge